

RESOLUTION NO. 20080618-037

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

Council authorizes execution of an interlocal agreement with the Capital Metropolitan Transportation Authority (Capital Metro) for the establishment and maintenance of quiet zones at various highway-rail grade crossings along the Capital Metro commuter rail line in substantially the same form as attached hereto as Exhibit "1", to eliminate the need for sounding of locomotive audible warning devices at such crossings.

ADOPTED: June 18, 2008

ATTEST:

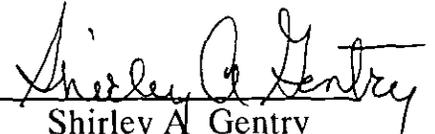

Shirley A. Gentry
City Clerk

EXHIBIT 1

INTERLOCAL AGREEMENT REGARDING QUIET ZONES

THE STATE OF TEXAS)
)
COUNTY OF TRAVIS) **KNOW ALL BY THESE PRESENTS:**

THIS AGREEMENT (Agreement) is made by and between the **CITY OF AUSTIN**, a Texas home rule municipality (City) and Capital Metropolitan Transportation Authority, a transportation authority located in Travis County and Williamson County, Texas, and organized under the provisions of Chapter 451 of the Texas Transportation Code (Capital Metro), collectively referred to as the Parties in this Agreement

I. RECITALS

1.01 Capital Metro is the owner of railroad right-of-way within the city limits of the City and has requested that the City create zones (Quiet Zones) along certain portions of the railroad right-of-way, that include crossings over the railroad rights-of-way (Crossings), relieving rail carriers operating on those lines from the obligation to sound locomotive audible warning devices within the Quiet Zones under the Austin City Code (City Code) Quiet Zones are those areas meeting the standards prescribed by Federal Railroad Administration Regulation 49 CFR Part 222 (the Regulation) in the railroad right-of-way owned by Capital Metro within the full-purpose city limits of the City created at the official request of the City in accordance with the Regulation

1.02 Capital Metro has installed Supplemental Safety Measures or Alternative Safety Measures (collectively Safety Measures) prescribed by the Regulation within the designated proposed Quiet Zones as a substitute for sounding locomotive audible warning devices by the railway carriers operating within the Quiet Zones

1.03 Capital Metro has agreed to assume responsibilities and to perform certain duties concerning these Quiet Zones

1.04 Because of the Safety Measures implemented by Capital Metro and the assumption by Capital Metro of the responsibilities and duties concerning the Quiet Zones, the Parties desire to create Quiet Zones The City desires to enter into this Agreement to allow Quiet Zones to be created on Capital Metro's rail line within the City limits without the need for further amendment of the City Code, and intends to amend City Code Chapter 13-4 to authorize administrative application and creation of such Quiet Zones

1.05 The City and Capital Metro desire to set forth in writing the agreed terms for the operation, maintenance and control of the Safety Measures within the Quiet Zones, the obligations of the railway carriers operating within the Quiet Zones, and the responsibility of Capital Metro for the operations of railway carriers operating within the Quiet Zones

1.06 The Parties recognize and acknowledge that the Federal Railroad Administration (FRA) may make changes to 49 CFR Parts 222 & 229 Use of Locomotive Horns at Highway-Rail Grade Crossings which impose additional duties and responsibilities on the Parties not contemplated by this Agreement. The Parties also recognize and acknowledge that the imposition of these additional duties may affect the continuation of the Quiet Zones contemplated by this Agreement. The Parties also recognize and acknowledge that certain provisions of state law and regulations may also apply to this Agreement.

1.07 On _____, the Austin City Council adopted a resolution authorizing execution of this Agreement and waiving any conflict between this Agreement and Chapter 13-4 of the City Code. On April 28, 2008, Capital Metro's Board of Directors, by resolution, a copy of which is attached to this Agreement as Exhibit A, authorized the execution of this Agreement with the City to effectuate the creation, operation, and maintenance of the Quiet Zones desired by Capital Metro.

1.08 The parties are aware that some of the crossings within the proposed Quiet Zones are on roadways controlled by the State of Texas, and Capital Metro will assume responsibility for coordinating with the State if necessary.

1.09 Capital Metro, as evidenced by the execution of this Agreement, is authorized to negotiate and execute this Agreement with the City for the operation, maintenance and enforcement of Quiet Zones.

NOW, THEREFORE, in consideration of the foregoing premises, the mutual covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties, the City and Capital Metro agree as follows:

II. OBLIGATIONS OF CAPITAL METRO

2.01 Quiet Zones. Quiet Zones governed by this Agreement shall be any Quiet Zone created by the City meeting the standards prescribed by the Regulation in the railroad right-of-way owned by Capital Metro within the full-purpose city limits of the City. A list of existing Quiet Zones and those currently contemplated for the creation of a Quiet Zone in the future are identified in Exhibit B. Future Quiet Zones may be created in accordance with the terms of this Agreement and Exhibit B will be modified and become effective immediately to incorporate the new Quiet Zones into this Agreement. Capital Metro shall maintain a current Exhibit A and shall make it available upon request. Each time Capital Metro updates Exhibit A, the most current version shall be transmitted to the City along with a description of the change(s) from the prior version.

2.02 Safety Measures. Capital Metro shall install Safety Measures in compliance with the Regulation at all Quiet Zones.

2.03 Applicability of the City Code and Preemption by State or Federal Law. The requirements of the City Code regarding rail carrier operations, as amended from time to time, shall apply to Quiet Zones created under the terms of this Agreement. The

City intends to amend City Code Section 13-4-61 to authorize the administrative creation of Quiet Zones in accordance with this Agreement. The Parties recognize and agree that.

- (a) State law and regulations, together with federal law and regulations, may preempt the provisions of the City Code and this Agreement
- (b) Capital Metro may be required to modify the Safety Measures or its maintenance and operation of the Safety Measures, to comply with state and federal requirements. Capital Metro shall assume all responsibility for any such modifications and for compliance with all applicable federal and state law requirements
- (c) This Agreement may be required to be modified to reflect the continued and developing requirements of state and federal law and regulations concerning Quiet Zones. The Parties agree to use their best efforts to enter into any further agreements necessitated by the implementation of changes under state and federal law. If the Parties are unable to reach an agreement concerning modifications to this Agreement necessitated by changes in state or federal law and regulations within 90 days of the changes, the City shall have the right, upon Notice to Capital Metro, to terminate its authorization of the Quiet Zones and shall have the right to terminate this Agreement. Capital Metro, upon receipt of Notice by the City under this subparagraph, shall terminate the Quiet Zones pending the completion and execution of any further agreements necessitated by changes in state or federal law in accordance with the terms of subparagraph 2.09 of this Agreement.

2.04 Ownership, Operation and Maintenance of Quiet Zone Safety Measures.

The installation, ownership, operation, maintenance, and control of the Safety Measures installed in the Quiet Zones and all associated costs shall be the sole responsibility of Capital Metro at all times

2.05 Responsibility for Injuries, Loss of Life or Damage to Property. Capital Metro shall be responsible for

- (a) The safety of its own employees and authorized agents,
- (b) Any loss or damage to property of the City or for injury to or the loss of life of any City employees,
- (c) Any loss or damage to the property of third persons or for injury to or loss of life of third persons

directly caused by Capital Metro, or its employees, authorized agents, resulting from the construction, installation, control, operation or maintenance of the Safety Measures in the Quiet Zones

2.06 Responsibility in the Event of the Inoperability or Failure of the Safety Measures Immediately upon learning that any Safety Measures in the Quiet Zones are inoperable or malfunctioning, Capital Metro or its designee shall notify the City by contacting the Transportation Division of the City Public Works Department on an as-needed basis for the purpose of insuring public safety

- (a) Capital Metro or its designee shall immediately advise all rail operations on the railroad rights-of-way of any crossing signals are malfunctioning or inoperable and their location. Capital Metro or its designee shall require the rail carriers to blow whistles, sound horns, or use other warning devices in the Crossings as required by City Code, state, or federal law as though the Crossings were not located within a designated Quiet Zone until such time as the inoperable or malfunctioning Safety Measures are restored to a fully functional status
- (b) Capital Metro shall advise the City of the status of the repairs to the Safety Measures on an as-needed basis and shall advise the City upon the restoration of the Safety Measures to a fully functional status

2.07 Rail Carriers Operating within the Quiet Zones A list of the rail carriers together with their business addresses, business telephone numbers, and emergency telephone numbers for the chief operating officer for each rail carrier operating on the railroad rights-of-way in which the Quiet Zones are located, is attached as Exhibit C. Within fifteen days of the consummation of any agreement by Capital Metro permitting any additional rail carrier to operate on the rail system in which the Quiet Zones are located, Capital Metro shall provide the City with a copy, if any, of Capital Metro's agreement with the additional rail carrier, together with the name, business address, business telephone number, and emergency telephone number of the chief operating officer for the additional rail carrier

2.08 Administrative Responsibility for the Creation and Maintenance of the Quiet Zones. Capital Metro agrees to prepare and deliver all notices and perform all administrative functions required by the Regulation for the City to create the Quiet Zones. Capital Metro shall present all documents to the Transportation Division of the City Public Works Department for approval, such approval shall not be unreasonably withheld. Capital Metro agrees to communicate to the City all information reasonably necessary for the proper administration of the Quiet Zones and for the accomplishment of this Agreement. Capital Metro agrees to coordinate with the State of Texas if necessary to establish or maintain Quiet Zones

2.09 Procedure for Termination of the Quiet Zones. Capital Metro agrees to follow all procedures specified by the City Code or any directives by the City under applicable state or federal law or regulation for the termination of the Quiet Zones as may be required by the City Code, state and federal law. If Capital Metro disagrees with the termination of the Quiet Zones, Capital Metro agrees to abide by the termination determination pending the review of the decision or directive to terminate under the terms of the default provisions of this Agreement, or state, or federal law

III. GENERAL PROVISIONS

3.01. Authority. This Agreement is made pursuant to the authority conferred upon the Parties by Chapter 791, Texas Government Code

3.02. Default Process. If one Party believes that the other Party is in default of any provision of this Agreement, the non-defaulting Party shall give written Notice to the other Party, specifying the event of default and extending the defaulting Party thirty calendar days to cure the default except as otherwise provided by this Agreement

- (a) This thirty-day period for Notice and opportunity to cure must pass before the *non-defaulting Party may initiate any remedies available to the non-defaulting Party* due to an alleged default. The non-defaulting Party must mitigate any direct or consequential damages arising from any default to the extent reasonably possible under the circumstances
- (b) The Parties agree that they will use good faith and reasonable efforts to resolve any dispute by agreement. If no agreement is reached, the Parties agree to engage in nonbinding arbitration, mediation or other alternative dispute resolution methods as recommended by the laws of the State of Texas, before initiating any lawsuit to enforce their respective rights under this Agreement.
- (c) If the default is not cured during the thirty-day period, the non-defaulting Party may pursue all remedies, at law or in equity, that it deems appropriate to redress such default. Nothing in this Agreement will be construed to limit any Party's right to recover damages or seek other appropriate curative remedies if a non-defaulting Party files a breach of contract action relating to this Agreement. Nothing in this Agreement shall be construed as a waiver of a Party's right to seek emergency relief in the event of an emergency or a waiver of the rights of a Party existing under the laws of the State of Texas
- (d) If Capital Metro fails to operate, maintain, or control the Safety Measures installed within any of the Quiet Zones in accordance with City, state or federal requirements, the City shall have the right to require Capital Metro to deactivate the affected Quiet Zone(s). If Capital Metro fails or refuses a directive of the City to deactivate a Quiet Zone and to require rail carriers operating on the railroad right-of-way to blow whistles, sounds horns, or use other warning devices at the Crossings within the Quiet Zones as though the Quiet Zones did not exist, the City shall have the right to seek emergency and equitable relief in a court of competent jurisdiction for such failure or refusal.

3.03 Severability. If any word, phrase, clause, sentence, paragraph, section or other portion of this Agreement is held to be invalid for any reason by a court or agency of competent jurisdiction, the remainder of this Agreement shall not be affected and this

Agreement shall be construed as if such invalid portion had never been contained herein and the provisions of this Agreement are expressly deemed severable for this purpose

3.04 Force Majeure. If, by reason of Force Majeure, any Party shall be rendered wholly or partially unable to carry out its obligations under this Agreement after its effective date, then such Party shall give written Notice of the particulars of such Force Majeure to the other Party within a reasonable time after the occurrences thereof.

- (a) The obligations of the Party giving such Notice, to the extent affected by such Force Majeure, shall be suspended during the continuance of the inability claimed and for no longer period, any such Party shall in good faith exercise its best efforts to remove and overcome such inability
- (b) The subparagraph 3 04 regarding Force Majeure does not apply to those conditions addressed by subparagraph 2 04 of this Agreement Force Majeure will not relieve Capital Metro of its obligations and responsibilities under subparagraph 2 04 of this Agreement governing the inoperability or malfunctioning of the Safety Measures in the Quiet Zones If a Force Majeure event renders the Safety Measures inoperable for any reason, Capital Metro shall proceed as provided in subparagraph 2 04
- (c) The term “**Force Majeure**”, as used in this Agreement, means and refers to acts of God, strikes, lockouts or other disturbances, acts of public enemies, orders of any kind of government of the United States, the State of Texas, or any other civil or military authority, insurrections, riots, epidemics, earthquakes, lightning, fires, hurricanes, storms, floods, washouts, or other natural disasters; arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, or other causes not reasonably within the control of the Party claiming such inability

3.05 Cooperation. The Parties agree to cooperate at all times in good faith to effectuate the purposes and intent of this Agreement

3.06 Amendments. Any amendment hereof must be in writing and signed by the authorized representative of each Party hereto

3.07 Entire Agreement; Superseding and Replacing Prior Interlocal Agreement on Quiet Zones; No Amendment of Other Agreements. This Interlocal Agreement contains the entire agreement of the Parties respecting the subject matter of this Agreement No other agreement, statement or promise relating to the subject matter of this Agreement that is not contained in this Agreement is valid or binding. This Interlocal Agreement is intended to supersede and replace a prior Interlocal Agreement between the Parties concerning Quiet Zones, fully executed on June 7, 2005, and that prior Agreement is hereby terminated on the effective date of this Agreement, provided however, that any unresolved claim, cause of action, accounting issue, or other matter arising during the term of that prior Agreement, whether now known or later brought to

the attention of the Parties, shall be governed by the terms of the prior Agreement, and that Agreement is continued in effect for such purpose. Unless otherwise expressly stipulated herein, this Agreement is separate from and shall not constitute an amendment or modification of any other agreement between the Parties.

3.08 No Third Party Beneficiaries. This Agreement shall inure only to the benefit of the Parties hereto and third persons not privy hereto shall not, in any form or manner, be considered a third party beneficiary of this Agreement.

3.09 No Partnership or Joint Venture; Independent Contractors. This Agreement shall not be construed in any form or manner to establish a partnership, joint venture, joint enterprise or agency, express or implied, nor any employer-employee or borrowed servant relationship by and among the Parties. The City and Capital Metro have the status of independent contractors hereunder and each will be solely responsible for the proper direction of its employees and servants, and agents. The employees, agents and servants, and employees of each of the Parties will not be considered employees, borrowed servants or agents of the other Parties for any reason.

3.10 Assignment. The rights and obligations of Capital Metro arising under this Agreement shall not be assigned without the prior written consent of the City, which consent shall not be unreasonably withheld.

3.11 Applicable Law. This agreement shall be construed under and in accordance with applicable Texas and federal law.

3.12 Venue. Venue for any action arising hereunder shall be in Travis County, Texas.

3.13 Notices. Except as provided by this Agreement, Notices to either Party shall be in writing, and may be either hand-delivered or sent by certified mail, postage paid, return receipt requested. If sent to the Parties at the addresses designated below, Notice shall be deemed effective upon receipt, in the case of hand-delivery, and three days after deposit in the U S Mail, in the case of mailing. The addresses for the Parties for Notices under this Agreement shall be:

Capital Metro
Rail Manager
Capital Metropolitan
Transportation Authority
2910 E 5th Street
Austin, Texas 78702

CITY OF AUSTIN
Public Works Department
City of Austin
P. O. Box 1088
Austin, Texas 78767
Attn: Transportation Division

3.14 Effective Date. This Agreement shall be effective from and after the date of due execution hereof by all Parties. Unless sooner terminated in accordance with the procedures set forth above, this Agreement shall terminate 25 years from the effective date.

3.15 Headings. All headings and captions used in this Agreement are intended solely for convenience and shall not enlarge, limit, or otherwise affect that which is set forth in any one of the paragraphs or sections in this Agreement

3.16 Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which will be deemed an original, but all of which will constitute one and the same instrument Each Party represents and warrants that it has the full right, power, and authority to execute this Agreement

3.17 Interpretation. The Parties acknowledge that this Agreement is voluntary and consensual on the part of each Party Each Party has fully participated in the negotiations, formulation, drafting, and approval of this Agreement If there is any ambiguity, the provisions of this Agreement are not to be construed for or against any particular Party by reason of authorship

3.18 Exhibits. The Exhibits referenced and attached to this Agreement are incorporated into this Agreement by reference for all purposes

IN WITNESS WHEREOF, each Party has executed this Agreement as of the dates set forth below

CITY:

APPROVED AS TO FORM:

Assistant City Attorney

CITY OF AUSTIN:

By

City Manager

Date _____

CAPITAL METRO

APPROVED AS TO FORM:

Sallie Crosby
Chief Counsel, Capital Metro

By.

Fred M. Gilliam
President and Chief
Executive Officer

Date _____

EXHIBIT A

CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY
2910 East Fifth Street, Austin, Texas 78702 | TEL 512 389 7400 | FAX 512 369 6596 | www.capmetro.org



RESOLUTION
OF THE
CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY
BOARD OF DIRECTORS

STATE OF TEXAS

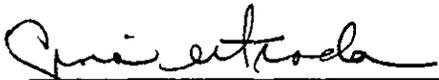
RESOLUTION NO.: CMTA-2008-0428-017

COUNTY OF TRAVIS

WHEREAS, the Capital Metropolitan Transportation Authority Board of Directors recognizes the desire of the community to have safe but quiet rail crossings within the city limits of Austin and recognizes that the best means to do so is through establishment of Quiet Zones by the City of Austin

NOW, THEREFORE, BE IT RESOLVED by the Capital Metropolitan Transportation Authority Board of Directors that the President/CEO or his designee finalize and execute an interlocal agreement on substantially similar terms between the Capital Metropolitan Transportation Authority and the City of Austin for the City of Austin to establish railroad Quiet Zones under Federal Railroad Administration guidelines at rail crossings within the Austin city limits

*It was moved by Gomez seconded by Martinez to approve the above resolution
The motion carried a vote of 6 ayes (Walker, Gomez, Allen, Martinez, Trevino
and Cowman) 0 nays*



Gloria Estrada
Executive Assistant/Board Liaison

Date: April 28, 2008

EXHIBIT B

CURRENT QUIET ZONES WITHIN THE CITY OF AUSTIN

CRESTVIEW/WOOTEN QUIET ZONE

<u>DOT #</u>	<u>LOCATION</u>	<u>MILEPOST</u>
765808E	Lamar Blvd	62 45
765809L	Morrow Street	63 21
765810F	Anderson Lane	63.49
765811M	Wooten Ped Xing	63 72
765812U	Ohlen Road	64 20

AVERY QUIET ZONE

<u>DOT #</u>	<u>LOCATION</u>	<u>MILEPOST</u>
924564M	Avery Ranch Blvd	77 95

PROPOSED QUIET ZONES WITHIN THE CITY OF AUSTIN

CHERRYWOOD QUIET ZONE

<u>DOT #</u>	<u>LOCATION</u>	<u>MILEPOST</u>
765800A	IH-35 SBFR @ 38 ½ St	59 90
765730M	IH-35 NBFR @ 38 ½ St	59.81
765729T	Wilshire Blvd	59 65
765731U	38-1/2 Street	59.33
765728L	Cherrywood	59 20
765727E	Manor Road	58 70
765726X	MLK Blvd.	58 40
765725R	12 th Street	57 92
765723C	Rosewood Avenue	57 55
765721N	Webberville Road	56.95
765764G	7 th Street	56 79
765718F	6 th Street	56 64
765754B	Pedernales Street	56 19
765752M	Robert Martinez Street	56 52
765750Y	Chicon Street	DT .23
765749E	Comal Street	DT .38
765744V	Navasota Street	DT .57
765740T	Waller Street	DT 76
765741A	IH-35 NBFR @ 4 th St	DT 93
765743N	IH-35 SBFR @ 4 th St	DT 1 00

PROPOSED QUIET ZONES WITHIN THE CITY OF AUSTIN

**EXPAND EXISTING
CRESTVIEW/WOOTEN QUIET ZONE TO
INCLUDE THE FOLLOWING CROSSINGS**

DOT #	LOCATION	MILEPOST
765813B	US 183 WBFR @ Burnet Rd.	64.90
913617D	US 183 EBFR @ Burnet Rd	64.80
765807X	Guadalupe Street	62.15
765806R	Denson Drive	61.69
765805J	Koeng Lane	61.25
765804C	53 rd Street	60.84
765803V	51 st Street	60.68
765802N	46 th Street	60.17
765801G	45 th Street	60.07

**EXPAND EXISTING
AVERY QUIET ZONE TO INCLUDE
THE FOLLOWING CROSSINGS**

DOT #	LOCATION	MILEPOST
924 571X	Lakeline Blvd	77.10
913616W	RR620 EBFR	75.42
913615P	RR620 WBFR	75.50
914512T	Parmer Lane WB	75.67
914513A	Parmer Lane EB	75.70
765665J	McNeil Round Rock Road	71.50
765659E	McNeil/Merriltown Road	70.40
765657S	McNeil Drive	69.41
765654W	Oak Creek Road	68.90
765651B	Adelphi Lane	68.20
765798B	FM 1325 (Loop 1) SBFR	67.74
764970R	FM 1325 (Loop 1) NBFR	67.70
900271R	Gracy Farms Road	67.15

EXHIBIT C

Rail Operations

Dispatch

EMERGENCY NUMBER 512/873-7767

Veolia Transportation, Inc.

Ray Green, Interim General Manager

Office 512/852-7294

Cell 512/721-6789

Al Friede, Track Chief

Office 512-832-6656

Cell 512/721-6801

Austin Western Railroad

David Lutz, Director of Freight Operations

Cell 512/497-1378

AUSTIN STEAM TRAIN ASSOCIATION (ASTA)

Office 477-8468